

Relationship Between Defense Authorization and Appropriation Measures: In Brief

Congress funds almost all defense activities through the conventional authorization-appropriation process.¹ In this two-step process, the authorization and appropriation functions are separated. First, Congress considers authorization bills making substantive policy — bills that establish, continue, and change agencies, programs, and activities and set the terms and conditions under which agencies and programs operate. The authorizing bills also may recommend spending levels for programs and activities. After the authorization bills are enacted, Congress considers annual appropriation measures. These bills generally provide funding (or budget authority²) for the authorized agencies, programs, and activities. Under this process, the appropriation acts may provide less than the amounts recommended in the authorization acts, or may provide no funding at all for authorized programs.³

The separation of authorization and appropriation functions is reinforced by two different types of congressional committees as well as House and Senate parliamentary rules. Authorization measures (or legislation measures) are under the jurisdiction of authorizing committees, such as the House and Senate Armed Services Committees; appropriation measures are under the jurisdiction of the House and Senate Appropriations Committees. Typically, the House and Senate consider an annual defense authorization bill, reported by the House and Senate and Armed Services Committees, authorizing almost all defense-related programs and activities. Next, each chamber considers several appropriation bills providing budget authority for defense-related activities. Defense funding, however, is

¹ For more information on defense authorization and appropriation measures, see U.S. Library of Congress, Congressional Research Service, *A Defense Budget Primer*, by Mary T. Tyszkiewicz and Stephen Daggett, CRS Report RL30002 (Washington: periodically updated).

For more information on the authorization-appropriation process in general, see: Louis Fisher, "The Authorization-Appropriation Process in Congress: Rules and Informal Practices," *Catholic University Law Review*, vol. 29, 1979, pp. 51-105; Allen Schick, *The Federal Budget: Politics, Policy, Process* (Washington: The Brookings Institution, 2000); U.S. Library of Congress, Congressional Research Service, *Legislation, Appropriations, and Budgets: The Development of Spending Decision-Making in Congress*, by Allen Schick, CRS Report 84-106 (Washington: May 1984); and U.S. Congress, House Committee on the Budget, *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*, by Allen Schick, committee print, 100th Cong., 1st sess., serial no. CP-3 (Washington: GPO, 1987).

² Congress provides budget authority (or *BA*), instead of cash, to agencies. Budget authority represents the legal authority for federal agencies to make *obligations* requiring either immediate or future expenditures (or *outlays*). These obligations (for example, entering into a contract to construct a ship or purchase supplies) result in outlays, which are payments from the Treasury, usually in the form of checks, electronic funds transfers, or cash disbursements. An appropriation is generally a type of budget authority.

³ Approximately one-third of annual spending is provided through this process, while the remaining two-thirds are funded either through authorization acts providing budget authority or through appropriation acts that are mandated by authorization acts to provide specific funding levels; both are referred to as *direct spending*. A small number of defense activities are funded through these methods.

provided mainly in three *regular appropriation bills*⁴ — defense, military construction, and energy and water development.⁵

The parliamentary rules generally reinforcing this process primarily restrict language in *general appropriation bills*.⁶ In both the House and Senate, the rules generally prohibit legislative language in general appropriation bills, such as language establishing or changing a program or activity (referred to as *legislation on an appropriation bill*⁷). Both chambers also generally prohibit providing appropriations for unauthorized programs or activities or exceeding spending ceilings recommended in the authorization act (referred to as *unauthorized appropriations*). The House prohibitions apply to the appropriations committee-reported bills, amendments, and conference reports.⁸ In the House, appropriations may not be provided in committee-reported legislative bills, amendments, or conference reports.⁹ The Senate has no prohibition regarding legislative bills.

Prior authorization is not generally required by the Constitution or any statute; however, it is required by statute for a few specific activities. For example, Section 114(a) of title 10 of the U.S. Code provides, in part, that no funds may be appropriated for nine specified Defense Department activities unless they have been specifically authorized by law. However, the General Accounting Office explains in the *Principles of Federal Appropriations Law* that a statutory requirement for prior authorization is essentially a congressional directive to itself, which Congress is free to follow or alter (up or down) in a subsequent appropriation act. Therefore,

.... if Congress appropriates money to the Defense Department in violation of 10 U.S.C. §114, there are no practical consequences. The appropriation is just as valid, and just as available for obligation, as if section 114 had been satisfied or did not exist.¹⁰

⁴ There are three types of appropriation measures — regular appropriation bills, continuing resolutions, and supplemental appropriation measures. Of the three types of appropriation measures, 13 regular appropriation bills have traditionally provided agencies most of their budget authority.

⁵ Comparatively minor amounts are provided in the Commerce-Justice-State-the Judiciary and Veterans Affairs-Housing and Urban Development-Independent Agencies regular appropriation bills. Tyszkiewicz and Daggett, *A Defense Budget Primer*, pp. 38.

⁶ The applicable House and Senate parliamentary rules are: House Rule XXI, clause 2; House Rule XXII, clause 5; and Senate Rule XVI. In the House, general appropriation bills include regular appropriation bills and most supplemental appropriation measures, but not continuing resolutions. In the Senate, general appropriation bills include regular appropriation bills, continuing resolutions, and most supplemental appropriation measures

⁷ Legislation on an appropriation bill is language that changes existing law, such as amending or repealing existing law or creating new law.

⁸ In the Senate, the prohibition against legislation on an appropriation bill applies only to committee and floor amendments to general appropriation bills, but does not prohibit such language in original Senate general appropriation bills or conference reports. The Senate rule prohibiting unauthorized appropriations provides exceptions. Most notably, the Senate Appropriations Committee may propose unauthorized appropriations.

⁹ House Rule XXI, clause 4, and House Rule XXII, clause 5.

¹⁰ U.S. General Accounting Office, *Principles of Federal Appropriations Law*, Second Edition, vol. (continued...)

Despite the comparatively simple two-step process, the conventional authorization-appropriation process, in practice, is more complex. The House and Senate rules (and precedents) discussed above provide additional exceptions to the rules. Furthermore, these rules are not self-enforcing, Congress may choose to ignore or waive them. Therefore, appropriation bills typically include legislation, provide more funds than authorized for programs and activities, or provide funds for unauthorized activities.

In addition, the appropriations committees use non-statutory means of setting policy by providing directives to agencies in committee reports and *joint explanatory statements*,¹¹ which are not subject to the parliamentary rules. Authorization acts have included language forcing appropriations and creating government liabilities that must be paid.

Annual authorization bills have been successfully used to force certain spending levels in appropriation measures.¹² Authorization acts may provide permanent, multi-year, or annual authorizations. Annual and multi-year authorization acts require re-authorization when they expire. Most defense activities are authorized in an annual bill.¹³ While annual defense authorization bills do not provide budget authority and Congress can appropriate less for programs and activities than the authorized levels, the annual defense authorization bills, reported by the House and Senate Armed Services Committees, may influence or make the spending decisions. Annual authorization measures generally authorize specific amounts. Congress typically considers them prior to consideration of the appropriation bills, and the debates on the authorization bills are normally focused on spending levels and priorities. Members of Congress frequently go on record on the budgetary needs of the programs and activities during consideration of an authorization bill. The subsequent appropriation bill usually makes only marginal changes in the budgetary decisions made on the authorization

¹⁰ (...continued)

1, GAO/OGC-91-5 (Washington: GPO, 1991), p. 2-35.

There are three specific statutory requirements of prior authorization for defense-related activities: (1) 10 U.S.C. 114(a), discussed above; (2) 50 U.S.C. 414(a)(1), (e)(3)(A), and (B), regarding intelligence and intelligence-related activities; and (3) 10 U.S.C., chapter 169, regarding military construction projects.

¹¹ During negotiations on the Senate- and House-passed versions of the bill in conference, the negotiators also compromise over differences between the Senate and House committee reports, which provide more detailed directives to agencies than those provided in the reported bills. The compromises on the bill language are provided in the conference report, while the compromises on the committee reports are provided in the joint explanatory statement, which is attached to the conference report.

¹² Fisher, "The Authorization-Appropriation Process in Congress: Rules and Informal Practices," pp. 59-87, and Schick, *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*, pp. 12-19.

¹³ The number of defense activities subject to annual authorization has increased over time.

Until 1959, most (defense) authorizations were permanent — with no limit. The only (defense) programs authorized annually were manpower end-strengths, military construction, and family housing programs. Since 1959, more and more defense programs have been made subject to annual authorization, beginning with procurement programs for aircraft, missiles, and naval vessels and continuing through working-capital funds, for which annual authorizations were first required in 1983 . . . (Tyszkiewicz and Daggett, *A Defense Budget Primer*, pp. 34-35.)

bill. "While these changes can be important or controversial, in most cases they do not significantly alter the program and financial policies set in the authorizing legislation."¹⁴

After the authorization and appropriation bills have been enacted, certain principles govern implementation of these acts.¹⁵ For example, an unauthorized appropriation enacted in law may generally be expended. Enacted legislation in an appropriation act has the force of law. The appropriation to carry out an authorization act must be expended according to the authorization act requirements, unless otherwise specified in the appropriation act. If provisions in an authorization act and an appropriation act conflict, the latest expression of Congress governs, which is usually the appropriation act. There is usually little conflict between provisions in the defense authorization and appropriation acts since neither generally specifies detailed spending levels. The detailed funding levels are provided in the accompanying committee reports and joint explanatory statements. These conflicts are not subject to court resolution or parliamentary rules. Periodically, the authorization and appropriation committees attempt to resolve them through negotiation and informal compromises.¹⁶

¹⁴ Schick, *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*, p. 15.

¹⁵ For more information, see U.S. General Accounting Office, *Principles of Federal Appropriations Law*, pp. 2-33 through 2-78.

¹⁶ Tyszkiewicz and Daggett, *A Defense Budget Primer*, pp. 44-45.